

## **POLICY**

The public policy of the territorial government of Guam is to protect and safeguard the civil rights of all individuals to seek, have access to, obtain and hold employment without discrimination because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, and/or age. Employment practices should treat all individuals equally, evaluating each individual only on the basis of bona fide occupational qualification, unless pursuant to permissible defense as enumerated in the law.

## **OBJECTIVES**

A. Assist private sector employers and employees on allegations of employment discriminations through discussions of infractions.

B. Assist employers to know their legal responsibilities at the workplace to reduce or avoid any form of discrimination.

## **AUTHORITY**

Executive Order Number 83-010 established the Fair Employment Practice Division within the Guam Department of Labor on April 1, 1983. Such authority vested in the Division is reiterated in Title 22, Guam Code Annotated, Division 1, Chapters 3 and 5.

Fair Employment Practice administers and enforces the provisions of Public Law 9-254, relative to unlawful employment practices, in addition to Title LX, Chapter II and Title XLII, Chapter IV of the Fair Labor Standards.

### Work-Sharing Agreement

A Work-Sharing Agreement was executed on October 28, 2008, with Contract Number EECCN080145, between the U.S. Equal Employment Opportunity Commission and the Government of Guam with the following features:

- Designates Government of Guam's Department of Labor as Fair Employment Practice Agency (FEPA).
- FEPA has jurisdiction over allegations of discrimination filed against employers by employees within the Territory of Guam.
- Discrimination Charges filed at FEPA are dual filed with EEOC, Los Angeles District Office.
- EEOC and FEPA have authority to receive, initiate and investigate charges of discrimination filed against employers on the basis of race, sex, religion, national origin, color, age, disability, genetic information, and retaliation.
- EEOC and FEPA's roles in an investigation are to fairly and accurately evaluate the charge allegations in light of all the evidence obtained.

- Statutes      Enforced by EEOC and FEPA:

1. Title VII of the Civil Rights Act of 1964
2. Age Discrimination in Employment Act
3. Equal Pay Act
4. Americans with Disabilities Act
5. Genetic Information Non-Discrimination Act

## **DISCRIMINATION CHARGE PROCESSING:**

When an employment **Discrimination Complaint** is received by FEPA, it is logged into the EEOC system. Next, the FEPA staff conducts and documents an

### **Intake Interview**

with the Charging Party and prepares a

### **Charge Assessment**

on the complaint. After a summary of the

### **Charge of Discrimination**

is formalized, the employer is notified that the charge has been filed and is provided with the name and contact information of the investigator assigned to the case. The employer is asked to submit a

### **Statement of Position**

, which is an opportunity for the employer to tell their side of the story.

During the investigation, the employer and the Charging Party will be asked to provide information, as needed. The investigator will evaluate the information submitted to determine whether unlawful discrimination has taken place. The employer may be asked to:

- Respond to a **Request for Information** (RFI). The RFI may ask for submission of copies of personnel policies, Charging Party's personnel files, the personnel files of other individuals, and other relevant information.
- Permit an **On-Site Visit**. Experience has been that such visits greatly expedite the fact-finding process and may help achieve quicker resolutions.
- Provide contact information for or have employees available for **Witness Interviews**.

Once the investigator has completed the investigation, FEPA will discuss the evidence with the Charging Party or employer, as appropriate. FEPA will make a determination on the merits of the charge, as follows:

- If FEPA determines that there is no reasonable cause to believe that discrimination occurred, the Charging Party will be issued a **Dismissal Letter**. The employer will also receive a similar document officially closing the charge because the evidence presented did not meet the legal criteria for establishing that discriminatory acts occurred. The Charging Party will also receive a **Notice of Right to Sue from EEOC** and may file a lawsuit in federal court within 90 days.

- If FEPA determines there is reasonable cause to believe discrimination has occurred, both parties will be issued a **Letter of Determination** stating that there is reason to believe that discrimination occurred and inviting the parties to join the agency in seeking to resolve the charge, through an informal process known as **Conciliation**.

- Where conciliation fails, FEPA with EEOC has the authority to enforce violations of its statutes by filing a lawsuit in federal court. If the EEOC decides not to litigate, the Charging Party will receive a **Notice of Right to Sue from EEOC** and may file a lawsuit in federal court within 90 days.

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[Note: **Alternate Dispute Resolution (ADR)/Mediation Program** is now available at Guam's FEPA. If the charge filed against a company is eligible for Mediation, both the Charging Party and the employer will be invited to take part in this option. Mediation under the ADR Program is recommended after filing a charge. Mediation is offered as an alternative to a lengthy investigation. Participation in the Mediation Program is free, quick, voluntary, and confidential. It requires consent from both Charging Party and employer. If Mediation is successful, there is no investigation. If Mediation is unsuccessful, the charge is referred for investigation.]

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